

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

STATUTORY REVIEW OF THE SYSTEM)
FOR REGULATING RATES AND CLASSES) Docket No. RM2017-3
FOR MARKET DOMINANT PRODUCTS)

**MOTION OF
ALLIANCE OF NONPROFIT MAILERS,
ASSOCIATION FOR POSTAL COMMERCE, AND
MPA—THE ASSOCIATION OF MAGAZINE MEDIA
FOR ISSUANCE OF INFORMATION REQUEST**

(March 8, 2018)

Pursuant to 39 C.F.R. § 3001.21(a), the undersigned parties respectfully request that the Presiding Officer or the Commission issue the following information request to the United States Postal Service:

Please produce workpapers for Appendix A to the Postal Service's Initial Comments filed on March 1, 2018 in this docket. The workpapers should contain enough information to enable interested parties to verify fully the data, assumptions and calculations underlying the values reported in the two charts. The workpapers should be produced in Excel or another widely used machine-readable spreadsheet format. Each cell should be fully sourced, and all formulas in the cells should be preserved as formulas rather than replaced with numbers. The workpapers should be produced in full on or before March 16, 2018.

Appendix A consists of "two charts projecting the Postal Service's losses and liquidity over five years, assuming the continuation of the current system or, alternatively, the addition of 2 percentage points of supplemental rate authority." Notice of the USPS of Filing Non-Public Materials (March 1, 2018). The Postal Service relies on the appendix to support the Postal Service's

claimed need for more money than the current system of regulation allows, or the alternative system proposed in Order No. 4258 would allow. Initial Comments of the USPS in Response to Order No. 4258 (March 1, 2018) at 7-8, 54-55, 63-64, 66 n. 170, 68 n. 173, 70 n. 175.

In Order Nos. 4425 and 4426, issued on March 5 and 6, 2018, the Commission granted the undersigned parties' unopposed motion for access by their outside counsel and consultants to the non-public version of Appendix A. The parties' reviewing representatives obtained the non-public version on March 6. The nonpublic version consists of the two charts with curves purporting to show the Postal Service's projected net losses and liquidity between 2018 and 2013 under various scenarios. The charts are unaccompanied by any workpapers, however. The source data, calculations and most of the assumptions underlying the values in the charts are undisclosed. See USPS Phase 2 initial comments at 54-55 (listing some variables supposedly modeled in Appendix A without revealing their values or the formulas in which they were used). Appendix A is essentially a black box.¹

In Order No. 4397 and several previous rulings before the Postal Service filed its Phase 2 comments, the Commission declined to issue information requests proposed by mailers on the theory that the requested information was

¹ The Postal Service submitted another pair of charts as Appendix G to its March 20, 2017 comments in Phase 1. The main body of those comments provided an equally conclusory description of the models supposedly used to generate the charts. USPS Phase 1 comments at 141-42. The Phase 1 comments, like the Phase 2 initial comments, did not reveal the actual values of the inputs or the equations used to generate the charts.

“premature” or unnecessary. Order No. 3763 at 3; Order No. 3807 at 8-9; Order No. 4397 at 4-5. The Commission assured the parties, however, that “it will consider requesting such information in accordance with its regulations” if it “later determines that additional information is necessary to facilitate its review.” Order No. 4397 at 4; *accord*, Order No. 3763 at 3; Order No. 3807 at 8-9 (“the Commission will consider requesting additional information if it determines that additional information is necessary to facilitate the development of proposed rules to modify the system.”). Whatever the merits of the Commission’s earlier rulings, the Postal Service should be required to support its Phase 2 comments with adequate workpapers.

The Commission proposes in Order No. 4258 to adopt an alternative system of regulation that would enable the Postal Service to collect an extra \$16 to \$24 billion from captive mailers over a five year period. The Postal Service contends in its initial Phase 2 comments that it needs even more money than Order No. 4258 would allow. As noted above, the Postal Service relies in large part on Appendix A to support this claim. Unless the Commission strikes or completely disregards Appendix A and all references to its financial projections, Section 4 of the Administrative Procedure Act, 5 U.S.C. § 553, entitles the undersigned parties to discover the data, assumptions and analyses underlying the financial projections.

The courts have held that Section 553 bars an agency from relying on “technical studies and data” in a notice-and-comment rulemaking without “reveal[ing]” them “for public evaluation.” *American Radio Relay League, Inc.*

v. FCC, 524 F.3d 227, 236 (D.C. Cir. 2008) (citations omitted). “Public notice and comment regarding relied-upon technical analysis ... “are ‘[t]he safety valves in the use of ... sophisticated methodology.’” *Id.* (citations omitted). It is “a fairly obvious proposition that studies upon which an agency relies in promulgating a rule must be made available during the rulemaking in order to afford interested persons meaningful notice and an opportunity for comment.” *Id.* at 237; *accord*, *California Wilderness Coalition v. U.S. Dept. of Energy*, 631 F.3d 1072, 1090-91 & n. 12 (9th Cir. 2011).

Accordingly, the undersigned parties request that the Commission issue the information request proposed above. We specifically ask that the Postal Service be required to produce the requested information on or before March 16. If Appendix A was calculated as the Postal Service claims, the spreadsheets and other source documents underlying the values in the charts should be prepared already. Moreover, even a production date as early as March 16 will still leave the mailers with only two weeks before March 30 to analyze and respond to analyses that, according to the Postal Service, have been in preparation for more than a year.

We also request the Commission to require the Postal Service to produce the workpapers in Excel or another widely used machine-readable spreadsheet format. Each cell should be fully sourced, and all functions in the cells should be preserved as functions rather than replaced with numbers. Allowing the Postal Service to produce the workpapers merely as pdfs or replace working

functions in the cells with numbers would greatly increase the time needed to review and test the Postal Service's calculations.

Finally, we request that the Commission expedite the review process by authorizing the same seven reviewing representatives covered by Order Nos. 4425 and 4426 to obtain immediate access to the workpapers when produced (subject to the same protective conditions incorporated by Order Nos. 4425 and 4426).

Respectfully submitted,

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